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House Judiciary Committee  
**Opposition to SB 4**

The Montana Trial Lawyers' basic position flows from our support of the basic principle that individuals, business entities and governmental entities should be accountable and responsible for their actions or omissions that cause harm to another. This principle is set forth in the Declaration of Rights, Article II, Section 16 of our Montana Constitution which provides that "Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property or character." This mirrors the 7<sup>th</sup> Amendment to the U.S. Constitution that protects our right to a trial by jury in civil matters. These constitutional rights are the impetus of section 27-1-701 of the Montana Code which provides that "each person is responsible not only for the results of the person's willful acts but also for an injury occasioned to another by the person's want of ordinary care or skill in the management of the person's property or person...."

What bills like Senate Bill 4 mean, is that you are being asked to say that some group is so special that they deserve a privilege or immunity that exempts them from liability if they fail to act with ordinary care or skill - the standard that the rest of us are accountable to. Because Article II rights are fundamental, you need more than just a rational basis for limiting the right to a remedy for "**every** injury."

The gross negligence standard in SB 4 does not alleviate our concerns. It is still a limitation of rights. If a person veers over the center line and hits you, he is responsible and liable for his ordinary negligence - but, he would have to also be speeding or in some other way acting recklessly if he is responsible only for gross negligence.

This bill also conflicts with Article II, Section 31 of the Montana Constitution – the legislature shall make no laws that are a “grant of special privileges, franchises, or immunities.” SB 4 asks you to grant a special privilege to sports officials and give them the limited immunity of the gross negligence standard.

We oppose this bill on principle. To my knowledge, none of our members have sued a Montana sports official for negligence. And, in any case that might be brought, the jury would also consider the comparative negligence of the injured person – what was the responsibility of the parents that allowed a youngster to run out on to the court, what was the responsibility of the cheer leader who went onto the field during a play, etc?

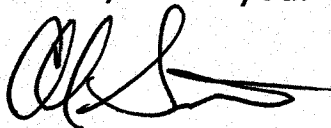
The biggest problem with this bill is that there is no rational basis for treating sports officials differently - no evidence of large numbers of suits, no evidence of an insurance 'crisis' or any other factual basis to justify this bill. This statute violates equal protection, all other victims of negligence only have to prove negligence, while those that are injured by sports officials have to prove a higher standard – gross negligence.

*Oberson* (snow mobile areas) case says you cannot grant the participants of one dangerous activity with a lower standard of care than you do with the participants of other dangerous activities. The Court struck down a gross negligence standard, and said the normal negligence standard applied.

Of all the institutions of government, only one - the judicial system - is dedicated to the individual. In court, every person is not only the equal of their neighbor, but also the equal of the largest corporation, and even the government itself. One role of the courts is simply to protect our constitutional rights - including the rights of liberals, conservatives, Republicans, Democrats, consumers and businesses, athletes and officials.

There is a cost to protecting our individual rights. That cost is making sure that the legal rights of each of our fellow citizens is also protected, without compromise, without exception, without special privileges. Like an alcoholic who takes that first drink, when we start compromising the rights of our "less worthy" neighbors, or granting privileges and immunities for "more worthy" groups, there may be no end until finally rights we individually hold dear are swept away as well.

Thank you for your consideration in voting no on SB 4.



Al Smith  
Executive Director